IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 487 OF 2005

M/s. Ashtabhuja Enterprises & Ors... Appellants.

Versus

M/s. Bharat Petroleum Corporation Limited.. ... ... Respondent.

Mr. A. M. Sarogi for the Appellants.

Mr. N. V. Walawalkar with Mr. S. R. Page for the Respondent.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

Admit. Learned Counsel appearing for Respondent waives service. Taken up for hearing forthwith.

2. By this appeal from order, the original defendants have taken exception to the order dated 12th April, 2005 by which ad-interim relief has been granted in favour of the respondent/plaintiff.

3. Shri Sarogi, learned Counsel appearing for the

appellants, submitted that the learned trial Judge has committed an error by granting drastic ad-interim relief in terms of prayer clause (a) which has the result of preventing entry of the appellants in the property in dispute. He pointed out the directions given by the learned trial Judge to the Sr. Inspector of Cuffe Parade Police Station to grant required assistance to the respondent/plaintiff if the appellant commits breach of the order. He submitted that such a drastic direction could not have been given at an ad-interim stage.

4. Shri Walawalkar, learned Counsel appearing for the respondent has supported the impugned judgment and order by pointing out various clauses in the Dealership Agreement. Shri Walawalkar also placed reliance on the judgment and order dated 2nd March, 2005 passed by the trial Court in Notice of Motion No. 773 of 2005 in S. C. Suit No. 928 of 2005.

5. I have considered rival submissions. Considering relevant clauses in the Dealership Agreement and the prima facie findings recorded by the trial Court in the earlier order dated 2nd March, 2005, in my view the learned trial Judge was justified in granting

ad-interim relief.

6. While granting the ad-interim relief, the learned trial Judge could not have directed the concerned Police Officer to grant assistance to the respondent/plaintiff. If order of ad-interim injunction is disobeyed by the appellants, the respondent can always take out appropriate proceedings as it deems fit and such a drastic direction of police help was not warranted while granting ad-interim relief. Hence, I pass the following order:-

(a) Following part of the impugned judgment and order is set aside:

> "The Sr. Inspector of Cuffe Parade Police Station shall grant the required assistance to the plaintiffs if any of the defendants seek to breach the order."
>
> Rest of the order is confirmed.

(b) In case the appellants do not abide by the ad-interim order, it is always open

for the respondent / plaintiff to take out appropriate proceedings and to claim appropriate relief including the relief of police assistance.

(c) Hearing of the notice of motion is expedited and the same shall be decided on or before 31st July, 2005.

(d) It is obvious that the pending notice of motion will be decided on its own merits without being influenced by the observations made in the impugned judgment and order.

7. Appeal from order is disposed of in above terms. No order as to costs.

Parties and the concerned Court to act on an authenticated copy of this order.

Sd/-

(**A. S. OKA, J.**)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 548 OF 2005

IN

APPEAL FROM ORDER NO. 487 OF 2005

M/s. Ashtabhuja Enterprises & Ors... Appellants.

Versus

M/s. Bharat Petroleum Corporation Limited.. ... ... Respondent.

Mr. A. M. Sarogi for the Appellants.

Mr. N. V. Walawalkar with Mr. S. R. Page for the Respondent.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

In view of the order passed in the Appeal from Order, this Civil Application does not survive. Hence rejected.

Sd/-

(A. S. OKA, J.)